

REMARKS/ARGUMENTS

Claims 1-4 are pending in the present application. Claims 1-4 have been amended by this Amendment.

Claim Rejections under 35 USC § 101

Claims 2 and 4 stand rejected under 35 USC § 101 as not falling within one of the four statutory categories of invention. The Examiner asserts that the claimed methods are of sufficient breadth that they can be reasonably interpreted as including steps that are completely performed mentally, verbally or without a machine. In particular, the Examiner asserts that the step of “providing a portable audience monitoring unit...” is sufficiently broad to read on a person providing the portable audience monitoring unit.

As the Examiner has stated, a statutory process must be tied to another statutory category, such as a particular apparatus. However, contrary to what the Examiner alleges, this does not prohibit any of the steps to be performed by a person. There is no question that a portable audience monitoring unit is “a particular apparatus”. Thus, even a “providing” step performed by a person is “tied to another statutory category.” Also contrary to what the Examiner alleges, the specified step cannot be completely performed mentally, verbally or without a machine. If the portable audience monitoring unit is “a particular apparatus,” which it indisputably is, and if further steps recited in the claim utilize that apparatus, which they clearly do (e.g. detecting, storing, outputting, transmitting), then the step of “providing” cannot simply be performed mentally, verbally or without a machine. To say otherwise strains credulity.

The process steps of claims 2 and 4 are positively tied to a particular apparatus, i.e., the portable audience monitoring unit, and are thus statutory. Accordingly, the Examiner is respectfully requested to reconsider and withdraw the rejection under 35 USC § 101 be withdrawn.

Claim Rejections under 35 USC § 103

Claims 1 and 2 stand rejected under 35 U.S.C. §103(a) as unpatentable over U.S. Patent No. 5,382,970 to Kiefl (“Kiefl”) in view of U.S. Patent No. 5,630,203 to Weinblatt (“Weinblatt”), and further in view of U.S. Patent No. 6,463,271 to Schroeder et al. (“Schroeder”). Claims 3 and 4 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kiefl in view of Weinblatt, and further in view of U.S. Patent No. 6,173,158 to Hansen et al. (“Hansen”).

Discussion of Disclosed Embodiments

The following descriptive details are based on the specification. They are provided only for the convenience of the Examiner as part of the discussion presented herein, and are not intended to argue limitations which are unclaimed.

Disclosed embodiments are directed to a method and apparatus for monitoring an audience member tuned to a broadcast program. The apparatus includes a portable audience monitoring unit adapted to be worn by the audience member. The portable audience monitoring unit includes means for detecting and storing a code signal that forms the broadcast signal in combination with a programming signal used to perform the program. The code signal corresponds to the broadcast program to which the audience member is tuned. More specifically, the portable audience monitoring unit detects the code signal within the broadcast signal of the program to which the audience member wearing the portable audience monitoring unit is tuned.

That is, the portable audience monitoring unit is configured to be worn by the audience member during the broadcast program to detect the code signal.

The portable audience monitoring unit further includes means for outputting the detected code signal stored in the portable audience monitoring unit, and communication means for transmitting the outputted detected code signal to a central processing station, wherein the communication means communicates with Cellular Digital Packet Data (CDPD). In another embodiment, the communication means utilizes a ReFLEX protocol.

Arguments

Independent claim 1 has been amended to recite, *inter alia*, “wherein the portable audience monitoring unit is configured to be worn by the audience member during the broadcast program to detect the code signal” that forms the broadcast signal in combination with a programming signal used to perform the program, which the art cited by the Examiner fails to disclose, teach or suggest. Independent claims 2-4 have been amended in a similar manner as claim 1. Support for the amendments to independent claims 1-4 is found at least in paragraph 33 of Applicants’ published application.

The Examiner, in the Response to Arguments section and at page 4 of the Office Action, relies on Kiefl as disclosing a portable audience monitoring unit.

Kiefl discloses a technique for monitoring and collecting data on, for example, the viewing habits of television viewers. A typical remote control 10 is used for switching among the available channels, and it is relied upon in this monitoring technique to provide a channel identifier signal. The channel identifier signal is stored in memory 28 and eventually transferred by cellular phone module 31 to a central location 30.

Personal data meters 16, 17 and 18 are provided to detect the output signal of remote control 10. These data meters are described as being “simply placed adjacent the television receiver 15 so that each may receive any infrared signal 12 emitted by remote control 10.” See col. 5, lines 44-47. Thus, the personal data meters are clearly and explicitly described as being not portable during user viewing, i.e., during a broadcast program.

The Examiner cites the Abstract of Kiefl as well as col. 2, lines 35-45 and col. 3, lines 22-26 of Kiefl in support of his position that Kiefl teaches portable personal data meters that can be carried or worn by a user. These portions of Kiefl (as well as the remainder of the description in Kiefl) teach that the personal data meters of Kiefl can be carried or worn by a user only when not in use. Kiefl fails to teach or suggest a personal data meter that is configured to be worn by the audience member while viewing a program to detect the output signal of remote control 10, i.e., during a broadcast program to detect a code signal.

If the personal data meters of Kiefl were to be worn during user viewing to detect the output signal of remote control 10 they would be rendered inoperable because the personal data meters of Kiefl must be placed adjacent to the television receiver. That is, the output signal of remote control 10 is relied upon for both switching the available channels at the television receiver and the operation of the personal data meters. However, the laws of physics dictate that the infrared signal 12 of the remote control 10 in Kiefl cannot be received by both the television receiver and a personal data meter worn by the user. It is only through placement adjacent to the television receiver that the infrared signal 12 of the remote control 10 in Kiefl can be received by both the television receiver and units 16, 17 and 18.

Even assuming, *arguendo*, that an audience member can wear the personal data meter of Kiefl, such a required position adjacent to the television receiver for the personal data meter is

not suitable for the audience member to view the broadcast program and, moreover, renders the personal data meter non-portable for the duration of user viewing if the personal data meter is to be used for its intended purpose. Kiefl therefore fails to disclose, teach or suggest “wherein the *portable* audience monitoring unit is configured to be *worn by the audience member during the broadcast program to detect the code signal*” that forms the broadcast signal in combination with a programming signal used to perform the program, as expressly recited by Applicants’ independent claim 1.

Even assuming, arguendo, the propriety of the Examiner’s proffered combination of Kiefl, Weinblatt, Schroeder and/or Hansen (which Applicants expressly refute in the Response filed June 29, 2009 and incorporated herein by reference), Weinblatt, Schroeder and Hansen fail to cure the deficiencies of Kiefl discussed above with respect to claim 1. The system of Kiefl, the principle of operation of which relies on personal data meters that must be placed adjacent to the television receiver to be used in conjunction with a locally generated signal which is manually actuated by the audience member, i.e., from a remote control, cannot employ a portable audience monitoring unit configured to be worn by an audience member during a broadcast program because such a modification would render the locally generated signal impotent and the overall system inoperable. Moreover, Kiefl’s principle of operation is clearly different from Weinblatt’s principle of operation that relies on portable monitoring units worn by the audience members and a signal which originates at the broadcasting station and is automatically reproduced locally with no intervention by the audience member. Weinblatt fails to cure the deficiencies of Kiefl discussed above with respect to claim 1, and the skilled artisan would not and could not modify the system of Kiefl to include the features of Weinblatt’s technique. Kiefl and Weinblatt therefore fail to disclose teach or suggest” wherein the portable audience

monitoring unit is configured to be worn by the audience member during the broadcast program to detect the code signal” that forms the broadcast signal in combination with a programming signal used to perform the program, as expressly recited by Applicants’ independent claim 1.

Schroeder and Hansen fail to bridge the gap between claim 1 and the combination of Kiefl and Weinblatt. There is nothing in Schroeder or Hansen which even hints at the above-mentioned claimed features of the present invention that are missing in the other applied references.

Independent claim 1 is accordingly deemed to be patentably distinct over the cited art for at least the foregoing reasons. Independent claims 2-4 recite features akin to those discussed above with respect to claim 1 and, therefore, claims 2-4 are deemed to be patentably distinct over the cited art for at least the same reasons as is claim 1.

In view of the foregoing, Applicants request that the rejection under 35 USC § 103(a) be withdrawn.

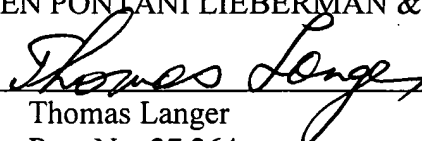
CONCLUSION

This application is now deemed to be in condition for allowance, and early notice to that effect is respectfully solicited.

Should the Examiner have any questions, comments or suggestions, he is respectfully requested to telephone the undersigned to facilitate resolution of any outstanding issues.

Respectfully submitted,
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